REMARKS

Claims 1-8, 11-16, 19 and 21 are pending. Claims 2, 3, 12, 13 and 21 have been amended to correct typographical errors, and Applicants do not intend to narrow these claims by the amendments. Claims 1 and 11 are amended to more particularly point out the claimed invention. The amendment of claim 1 and 11 are supported, for example, by claims 9 and 17, as filed. Claims 9, 10, 17 and 18 are canceled without prejudice. All of the pending claims stand rejected. Applicants respectfully request reconsideration of the rejections based on the following comments.

Claim Objections

The Examiner posed particular objections to claims 2, 3, 5, 11, 19 and 21. Applicants thank the Examiner for a careful reading of the claims. Applicants have corrected claims 2, 3, 12 and 13. While it is not clear why the Examiner objected to claim 21, Applicants have changed the claim as suggested by the Examiner since the amendment does not change the meaning of the claim. With all due respect, the Examiner has not indicated why the change should be made to claims 5, 11 and 19, and the change suggested by the Examiner arguably would change the claim scope. Applicants respectfully request some explanation to justify the objection to claims 5, 11, and 19 or respectfully ask that the objections be withdrawn.

Rejection Under Section 112

The Examiner rejected claim 21 under 35 U.S.C. § 112, second paragraph, as being indefinite. In particular, the Examiner asserted that λ-MnO_2 was not a lithium metal oxide. With all due respect, this is not correct since this notation was not intended to represent a particular crystal form of manganese dioxide. As described in Applicants' specification at page 44, lines 6-9, λ-MnO_2 has a formula $Li_xMn_2O_4$, with $0.05 \leq x, 0.20$. Thus, λ-MnO_2 is a lithium metal oxide.

In view of this clarification, Applicants respectfully request withdrawal of the rejection of claim 21 under 35 U.S.C. § 112, second paragraph, as being indefinite.

Double Patenting Rejection Over U.S. 6,225,007

The Examiner rejected claims 1-5, 8-13 and 16-19 under non-statutory obviousness-typically double patenting as being unpatentable over claims 1-10 of U.S. Patent No. 6,225,007 - to Horne et al. (the Horne patent). Applicants note that the present application has a priority date prior to the priority date of the Horne patent. Therefore, the present application is not and cannot be a way to extent the patent term of the later filed application. Under the patent term rules currently in place, an earlier priority date application should not be rejected for obviousness-type double patenting over a later filed patent. See, MPEP 804.02 VI.

The Examiner asserts that the objective of obviousness type double patent is to keep patents commonly assigned. With all due respect, that is only true when there is a corresponding attempt to extend the patent term. Since an earlier filed patent application cannot be a way to extend the patent term of a later filed application, the earlier filed application should not be subjected to an obviousness-type double patenting rejection. Under the Examiner's theory, most patents would be unenforceable since companies do not go back and file terminal disclaimers for all of their old patents when they file later improvement applications. Under the Examiner's theory, most older patents would be invalid whenever their was a later filed improvement patent application by the same company, which is very often the case. Thus, this is not a viable legal theory and was never the intent of the judicial doctrine.

Therefore, Applicants respectfully request withdrawal of the rejection of claims 1-5, 8-13 and 16-19 under the judicial doctrine of Obviousness-Type Double Patenting over the Horne patent.

Double Patenting Rejection Over U.S. 6,387,531

The Examiner rejected claims 1-5, 9-13, 17-19 and 21 under non-statutory obviousness-typically double patenting as being unpatentable over claims 18-20 of U.S. Patent 6,387,531. With all due respect, the '531 patent claims do not refer to mixed metal oxides. Specifically, carbon is not a metal, and the carbon is not in an oxide form as disclosed in the '531 patent. Carbon oxides (CO or CO_2) are gases and cannot be present in solid particles. Thus, the claims of the present application are clearly not *prima facie* obvious over the claims of the '531 patent. Since the claims of the present application are clearly not *prima facie* obvious over any claims of the '531 patent, Applicants respectfully request withdrawal of the rejection of claims 1-7, 9-15, 17-19 and 21 under non-statutory obviousness-typically double patenting as being unpatentable over claims 18-20 of U.S. 6,387,531.

Obviousness-Type Double Patenting Over U.S. 6,106,798

The Examiner rejected claims 1-5, 8, 9, 11-13, 16, 17 and 19 under the judicial doctrine of obviousness-type double patenting over claims 1-23 of U.S. Patent 6,106,798. With all due respect, the claims of the '798 patent do not teach or suggest mixed metal oxide particles. Therefore, these claims clearly do not render the present claims *prima facie* obvious. Thus, Applicants respectfully request withdrawal of the rejection of claims 1-5, 8, 9, 11-13, 16, 17 and 19 under the judicial doctrine of obviousness-type double patenting over claims 1-23 of U.S. Patent 6,106,798.

Obviousness-Type Double Patenting Over U.S. 6,506,493

The Examiner rejected claims 1-6, 9-14, 17-19 and 21 under the judicial doctrine of obviousness-type double patenting over claims 1-31 of U.S. Patent 6,506,493. With all due respect, the claims of the '493 patent do not teach or suggest mixed metal oxide particles. Therefore, these claims clearly do not render the present claims *prima facie* obvious. Thus,

Applicants respectfully request withdrawal of the rejection of claims 1-6, 9-14, 17-19 and 21 under the judicial doctrine of obviousness-type double patenting over claims 1-23 of U.S. Patent 6,506,493.

Obviousness-Type Double Patenting Over U.S. 6,726,990

The Examiner rejected claims 1-5, 10-13 and 18-19 under the judicial doctrine of obviousness-type double patenting over claims 1-15 of U.S. Patent 6,726,990. With all due respect, the claims of the '990 patent do not teach or suggest mixed metal oxide particles. Therefore, these claims clearly do not render the present claims *prima facie* obvious. Thus, Applicants respectfully request withdrawal of the rejection of claims 1-5, 10-13, and 18-19 under the judicial doctrine of obviousness-type double patenting over claims 1-23 of U.S. Patent 6,726,990.

CONCLUSIONS

In view of the foregoing, it is submitted that this application is in condition for allowance. Favorable consideration and prompt allowance of the application are respectfully requested.

The Examiner is invited to telephone the undersigned if the Examiner believes it would be useful to advance prosecution.

Respectfully submitted,

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